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MUHAMAD NAZRI MUHAMAD v. JMB MENARA RAJAWALI & ANOR

COURT OF APPEAL, PUTRAJAYA
VERNON ONG LAM KIAT JCA
SURAYA OTHMAN JCA
B HAS ZANAH MEHAT JCA
[CIVIL APPEAL NO: W-02(NCVC)(A)-2057-10-2018]
14 OCTOBER 2019
[2019] CLJ (JT7)

C ***LAND LAW:*** *Strata title – Management corporation – Joint management body ('JMB') – Maintenance charges – JMB resolved that mandate could be given to joint management committee ('JMC') to fix maintenance charges – JMC fixed different rates for maintenance charges for residential, retail shop and car park parcels – Whether mandate given to JMC valid and enforceable – Whether JMB/JMC* D *possessed legal power or authority to fix different rates – Whether imposition of different rates for maintenance charges contrary to and ultra vires provisions of Strata Management Act 2013*

STATUTORY INTERPRETATION: *Interpretation of Act – 'in proportion to the allocated share units' – Strata Management Act 2013, ss. 21(2) & 25(3) – Whether* E *read or construed as fettering ambit of joint management body's power to determine rate of maintenance fee – Whether provisions in Strata Management Act 2013 prevents joint management body of condominium from fixing different rates of charges for different types of units*

F The appellant ('the plaintiff') was the owner of a parcel in Menara Rajawali. The first appellant ('first defendant') was the joint management body ('JMB') while the second appellant ('second defendant') was the owner of all the car park parcels in Menara Rajawali. In the first annual general meeting ('AGM') of the JMB, it was unanimously resolved that, *inter alia*, mandate could be given to the joint management committee ('JMC') to fix the maintenance G charges for: (i) residential parcels and retail shop parcels at a rate not exceeding RM3.26 per share unit; and (ii) car park parcels at a rate not exceeding RM1.68 per share unit ('JMB's resolution'). The JMC then fixed the maintenance charges for: (i) residential and retail shop parcels at a rate of RM2.80 per share unit; and (ii) car park parcels at a rate of RM1.68 per H share unit ('JMC's decision'). The plaintiff filed an action, at the High Court, seeking declarations that both the JMB's resolution and JMC's decision were null and void *ab initio*. According to the plaintiff, the different rates of maintenance charges discriminated against retail shop and residential parcels and were unlawful in that it went beyond the JMB/JMC's legal power or I authority. The High Court Judge ('HCJ') dismissed the plaintiff's action on

the grounds that (i) the words 'share units' in the Strata Management Act 2013 ('SMA') is what would ordinarily be described as the 'multiplier' for purposes of determining the maintenance charge payable, while the rate payable as determined by the JMB *via* the JMC was the 'multiplicand'. The share unit or multiplier was fixed, whereas the multiplicand or rate could vary depending on what the JMB decided at the AGM; (ii) the phrase 'in proportion to the allocated share units' of each parcel, in s. 25(3) of the SMA, or 'in proportion to the allocated share units of their respective parcels', in s. 21(2) of the SMA, could not be read or construed as fettering the ambit of the JMB's power, as approved by the AGM, to determine such rate of maintenance fee or sinking fund contribution as was deemed appropriate in the circumstances; (iii) there is nothing in the SMA which prevents the JMB/JMC from fixing different rates of charges for different types or categories of parcels in the strata project, as long as this is approved by the AGM; (iv) it was for the AGM, comprising the owners, to decide whether the rate for maintenance charges for all types of parcels should be uniform or otherwise; and (v) as the approval was given by a unanimous resolution at the first AGM, it was perfectly valid and legal for the JMB to fix differing rates of charges for the residential/retail parcels and car park parcels. Hence, the present appeal. The plaintiff submitted that, *inter alia*, (i) the JMB's resolution and the JMC's decision were outside of their powers, conferred by the SMA, and therefore were *ultra vires* the SMA, null and void *ab initio*. The words 'in proportion', appearing in ss. 21 and 25 of the SMA, clearly requires the JMB/JMC to determine and fix only one rate to be applied to all types of parcels; and (ii) the SMA only allows a management corporation to determine different rates of charges for different parcels. In contrast, s. 21 of the SMA does not permit the JMB to determine different rates for different parcels. That power could not be implied by the JMB in the absence of such express provision.

Held (allowing appeal with costs; setting aside order of High Court)
Per Vernon Ong Lam Kiat JCA delivering the judgment of the court:

(1) In light of the fact that three weightage factors have been applied in the calculation of share units for car park parcels and which calculation was premised on equitable considerations, the JMB was only empowered to fix one rate which was applicable to all types of parcels. If that course was adopted, then the owners of different type of parcels would be paying maintenance charges in proportion to the allocated share units of their respective parcels because the rate per share unit was the same. Since the car park unit (whole floor parcel) was already enjoying a 40% discount by way of the calculation of its share units pursuant to the WF formula in the First Schedule, it would enjoy a further 42% discount given the lower rate of maintenance charges for the car park units. This additional discount would run counter to the legislative framework

which is intended to avoid inequitable, unfair and discriminatory practice in determining maintenance and maintenance charges rate. Therefore, the imposition of two different rates of maintenance charges for different types of parcels was incompatible with the meaning of 'in proportion' in ss. 21 and 25 of the SMA since there was no comparative relation, ratio or harmony between the two different rates and the different allocated share units of each parcel. In describing the share unit as the 'multiplier' and the rate as the 'multiplicand', the HCJ did not give proper effect to the phrase 'in proportion to the allocated share units' of sub-s. 21(2) and sub-s. 25(3) of the SMA. Accordingly, the description of the share unit as the 'multiplier' and the rate as the 'multiplicand' was not apposite. (para 25)

(2) It was important to apprehend the general legislative scheme of the SMA and the Strata Titles Act 1985 ('STA') which governs all strata development projects. Both statutes set out a comprehensive, transparent, equitable and uniform regime to allocate and calculate the share units of each parcel; which must be filed with the Commissioner of Buildings and approved by the Director of Lands and Mines. The HCJ did not appreciate that different weightage factors between the types of parcels have been taken into account in the First Schedule of the SMA. The JMB was required to determine and fix only a single rate of maintenance charges to be applied to all types of parcels in proportion to the allocated share units. The JMB's resolution, in fixing different rates for different types of parcels, was not in conformity with ss. 21 and 25 of the SMA. (paras 26 & 27)

(3) As a creature of statute, the powers of the JMB are limited and circumscribed by the SMA which regulates it, and extend no further than is expressly stated, or is necessarily and properly required for carrying into effect the purposes of its establishment, or may be fairly regarded as incidental to, or consequential upon, those things which the Legislature has authorised. What the SMA does not expressly or impliedly authorise was to be taken to be prohibited. (para 36)

(4) Under the clear statutory provisions, the JMB is the decision-making body, while the JMC is the executive arm responsible for the implementation of the JMB's decisions and performance of the JMB's duties. There is no provision in either the SMA, or the STA, which confers the JMC with the power to decide on the rates; or for that matter, which permits the JMB to delegate its decision-making duty under sub-s. 21(1)(b) of the SMA to the JMC. Such powers could not be implied in this case. The duty to make the decision was a duty imposed on the JMB and that duty was non-delegable. The decision to determine the maintenance charges was made by the JMB at an AGM

attended by the developer and purchasers; it was a collective decision. In short, the decision to fix the maintenance charges must be made by the JMB. It therefore followed that the JMB's resolution to delegate its duty to the JMC was in excess of the JMB's powers under statute. As such, the mandate given to the JMC was invalid, null and void. (para 37)

(5) There is no provision, under the SMA and the STA, which empowers the JMB to fix different rates for different types of parcels. In contrast, such a power is expressly conferred on a management corporation in respect of two specific situations, (i) parcels which are used for significantly different purposes, and (ii) provisional blocks. Therefore, if Parliament had intended for the JMB to have the power to fix different rates of maintenance charges, that intention would have been clearly reflected in the provisions of the SMA. Since there is no such provision, it must have been Parliament's presumed intention and wisdom not to confer such power on the JMB. It would be *ultra vires* the SMA for the JMB and the JMC to fix and impose the different rates which are not sanctioned by statute. Further, the JMB did not have the inherent power nor could it arrogate to itself such power, even if the approval was obtained in a unanimous resolution at the AGM. The JMB's resolution and the JMC's decision were set aside for being invalid, null and void. (paras 38, 40 & 41)

Bahasa Malaysia *Headnotes*

Perayu ('plaintif') ialah pemilik satu petak di Menara Rajawali. Perayu pertama ('defendan pertama') ialah badan pengurusan bersama ('BPB') manakala perayu kedua ('defendan kedua') ialah pemilik semua petak letak kereta di Menara Rajawali. Dalam mesyuarat am pertama ('AGM') BPB, disetujui bersama bahawa, antara lain, mandat diberi kepada jawatankuasa pengurusan bersama ('JPB') agar menetapkan caj penyenggaraan (i) petak kediaman dan petak kedai runcit pada kadar tidak melebihi RM3.26 satu unit syer; dan (ii) petak letak kereta pada kadar tidak melebihi RM1.68 satu unit syer ('resolusi BPB'). Jawatankuasa pengurusan bersama menetapkan kadar penyenggaraan untuk: (i) petak kediaman dan kedai runcit pada kadar RM2.80 satu unit syer; dan (ii) petak letak kereta pada kadar RM1.68 satu unit syer ('keputusan JPB'). Plaintif memfailkan tindakan, di Mahkamah Tinggi, memohon pengisytiharan bahawa resolusi BPB dan keputusan JPB terbatal dan tidak sah *ab initio*. Menurut plaintif, kadar penyenggaraan berbeza mendiskriminasi kedai runcit dan petak-petak kediaman dan tidak sah kerana melangkaui kuasa atau autoriti BPB/JPB bawah undang-undang. Mahkamah Tinggi menolak tindakan plaintif atas alasan (i) perkataan-perkataan 'unit syer' dalam Akta Pengurusan Strata 2013 ('APS') ialah sesuatu yang biasanya digambarkan sebagai 'multiplier' demi menentukan caj

penyenggaraan yang perlu dibayar, manakala kadar yang perlu dibayar, seperti yang ditetapkan oleh BPB melalui JPB, ialah 'multiplicand'. Unit syer atau multiplier telah ditetapkan, manakala multiplicand atau kadar boleh berbeza bergantung pada apa-apa keputusan BPB semasa AGM; (ii) frasa 'mengikut kadar unit syer yang diumpukkan', dalam s. 25(2) APS, atau 'mengikut kadar unit syer yang diumpukkan bagi petak mereka masing-masing', dalam s. 21(2) APS, tidak boleh dibaca atau ditafsir sebagai membelenggu rangkuman kuasa BPB, seperti yang diluluskan oleh AGM, untuk menentukan kadar penyenggaraan sedemikian atau sumbangan dana terikat yang dianggap sesuai berdasarkan hal-hal keadaan; (iii) tiada apa-apa dalam APS yang menghalang BPB/JPB daripada menetapkan kadar caj berbeza untuk jenis-jenis atau kategori petak berbeza dalam projek strata, selagi ini diluluskan oleh AGM; (iv) AGM, yang terdiri daripada para penduduk, bertanggungjawab memutuskan sama ada kadar caj penyenggaraan untuk semua petak harus seragam atau sebaliknya; dan (v) oleh kerana kelulusan diberi melalui resolusi sebulat suara semasa AGM pertama, adalah sah dan sempurna buat BPB menetapkan kadar caj berbeza untuk petak kediaman/runcit dan petak letak kereta. Maka timbul rayuan ini. Plaintif menghujahkan, antara lain, (i) resolusi BPB dan keputusan JPB melangkaui kuasa mereka yang diberi oleh SMA, dan dengan itu *ultra vires* APS, terbatal dan tidak sah *ab initio*. Perkataan 'mengikut' dalam ss. 21 dan 25 APS, jelas mensyaratkan agar BPB/JPB menentukan dan menetapkan hanya satu kadar terguna pakai pada semua jenis petak; dan (ii) APS hanya membenarkan perbadanan pengurusan menentukan kadar caj berbeza untuk petak berbeza. Sebaliknya, s. 21 APS tidak membenarkan BPB menentukan kadar berbeza untuk petak berbeza. Kuasa ini tidak boleh disiratkan oleh BPB tanpa peruntukan nyata sedemikian.

Diputuskan (membenarkan rayuan dengan kos; mengetepikan perintah Mahkamah Tinggi)

Oleh Vernon Ong Lam Kiat HMR menyampaikan penghakiman mahkamah:

(1) Berdasarkan fakta bahawa tiga faktor pemberatan diguna pakai dalam pengiraan unit syer petak letak kereta dan pengiraan ini berdasarkan pertimbangan berekuiti, BPB hanya berkuasa menetapkan satu kadar yang terpakai pada semua jenis petak. Jika langkah ini diguna pakai, maka para pemilik pelbagai jenis petak akan membayar caj penyenggaraan mengikut unit syer yang diumpukkan untuk petak masing-masing kerana kadar satu unit syer adalah sama. Oleh kerana unit letak kereta (petak seluruh tingkat) sudah menikmati diskaun 40% melalui pengiraan unit syernya berdasarkan formula WF dalam Jadual Pertama, unit letak kereta akan menikmati tambahan diskaun sebanyak 42% berdasarkan kadar penyenggaraan yang lebih rendah untuk unit

letak kereta. Oleh itu, pengenaan dua kadar caj penyenggaraan berbeza, untuk petak berbeza jenis, tidak sesuai dengan maksud 'mengikut' dalam ss. 21 dan 25 APS kerana tiada hubungan, nisbah atau harmoni yang boleh dibezakan antara dua kadar berbeza dan beza unit syer yang diumpukkan untuk setiap petak. Dalam menggambarkan unit syer sebagai 'multiplier' dan kadar sebagai 'multiplicand', HMT tidak memberi kesan pada ungkapan 'mengikut unit syer yang diumpukkan' oleh sub-s. 21(2) dan sub-s. 25(3) APS. Berikutan itu, gambaran unit syer sebagai 'multiplier' dan kadar sebagai 'multiplicand' tidak tepat.

(2) Penting untuk memahami skim perundangan am APS dan Akta Hakmilik Strata 1985 ('AHS') yang menyelia semua projek pembangunan strata. Kedua-dua statut menggariskan aturan yang menyeluruh, jelas, berekuiti dan seragam untuk mengumpukkan dan mengira unit syer untuk setiap petak, yang mesti difailkan pada Pesuruhjaya Bangunan dan diluluskan oleh Pengarah Tanah dan Galian. Hakim Mahkamah Tinggi tidak mempertimbangkan fakta bahawa faktor pemberatan berbeza antara jenis-jenis petak telah diambil kira dalam Jadual Pertama APS. Badan Pengurusan Bersama dikehendaki menentukan dan menetapkan hanya satu kadar caj yang terpakai pada semua jenis petak, mengikut unit syer yang diumpukkan. Resolusi BPB, dalam menetapkan kadar berbeza untuk petak berbeza jenis, tidak selaras dengan ss. 21 dan 25 APS.

(3) Sebagai satu ciptaan statut, kuasa BPB terbatas dan dihadkan oleh APS yang menyelianya, dan tidak melanjutkan apa-apa lagi selain yang jelas ternyata, atau semestinya dan secara teratur disyaratkan demi menguatkuasakan tujuan penggubalannya, atau boleh, secara adil, dianggap bersampingan atau berbangkit, kesemuanya yang dibenarkan oleh badan perundangan. Yang tidak dibenarkan oleh APS, secara nyata atau tersirat, hendaklah dianggap dilarang.

(4) Bawah peruntukan nyata, BPB adalah badan yang membuat keputusan manakala JPB ialah cabang yang bertanggungjawab menjalankan keputusan dan melaksanakan kewajipan JMB. Tiada apa-apa peruntukan, sama ada dalam APS mahupun AHS, yang memberi BPB kuasa membuat keputusan tentang kadar; atau bersangkutan itu, yang membenarkan BPB menugaskan kewajipannya membuat keputusan bawah sub-s. 21(1)(b) APS kepada JPN. Kuasa sedemikian tidak disiratkan dalam kes ini. Kewajipan membuat keputusan ada tugas yang dikenakan pada BPB dan kewajipan ini tidak boleh ditugaskan. Keputusan menentukan caj penyenggaraan dibuat oleh BPB dalam satu AGM yang dihadiri pemaju dan para pembeli; ini satu keputusan bersama. Pendek kata, keputusan menetapkan caj penyenggaraan mesti

dibuat oleh BPB. Berikutan itu, resolusi JMB yang menyerahkan tugasnya kepada JPB melangkaui kuasa BPB bawah statut. Oleh itu, mandat yang diberi kepada BPB terbatal dan tidak sah.

(5) Tiada peruntukan, bawah APS dan AHS, yang memberi kuasa kepada BPB untuk menetapkan kadar berbeza untuk petak berbeza jenis. Sebaliknya, kuasa ini nyata diberi kepada perbadanan pengurusan dalam dua situasi khusus, iaitu: (i) petak yang diguna untuk tujuan yang sangat berbeza; dan (ii) blok sementara. Oleh itu, jika Parlimen meniatkan agar BPB berkuasa menetapkan kadar berbeza untuk caj penyenggaraan, niat tersebut pasti tercermin dalam peruntukan-peruntukan APS. Oleh kerana peruntukan sedemikian tidak wujud, dianggap bahawa niat dan kebijaksanaan Parlimen adalah untuk tidak memberi kuasa tersebut kepada BPB. Menjadi *ultra vires* terhadap APS jika BPB dan JPB menetapkan dan mengenakan kadar berbeza yang tidak dibenarkan oleh statut. Selanjutnya, BPB tidak mempunyai kuasa inheren mahupun beranggapan badannya mempunyai kuasa tersebut, jika pun kelulusan diperoleh melalui resolusi sebulat suara semasa AGM. Resolusi BPB dan keputusan JPB diketepikan kerana terbatal dan tidak sah.

Case(s) referred to:

Andrew Lee Siew Ling v. United Overseas Bank (Malaysia) Bhd [2013] 1 CLJ 24 FC ***(refd)***

Ekuiti Setegap Sdn Bhd v. Plaza 393 Management Corporation [2019] 2 CLJ 592 CA ***(refd)***

Hari Bhadur Ghale v. PP [2012] 7 CLJ 789 FC ***(refd)***

Kee Keng Mow v. Setapak Garden Estate Ltd [1975] 1 LNS 69 HC ***(refd)***

Lai Yak Kee v. Pembinaan Alam Cemerlang Sdn Bhd [2012] 1 LNS 1464 FC ***(refd)***

Magor & St Mellons Rural District Council v. Newport Corporation [1952] AC 189 ***(refd)***

Malaysia Shipyard & Engineering Sdn Bhd v. Bank Kerjasama Rakyat (M) Bhd [1985] 2 CLJ 427; [1985] CLJ (Rep) 206 SC ***(refd)***

Perbadanan Pengurusan Endah Parade v. Magnificient Diagraph Sdn Bhd [2014] 5 CLJ 881 CA ***(refd)***

PP v. Tan Tatt Eek & Other Appeals [2005] 1 CLJ 713 FC ***(refd)***

Sri Bangunan Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Anor [2007] 5 CLJ 673 FC ***(refd)***

Tan Eng Choon v. Tay Boon See [1980] 1 LNS 74 HC ***(refd)***

Legislation referred to:

Housing Development (Control and Licensing) Regulations 1989, Schedule 4

Interpretation Acts 1948 and 1967, s. 17A

Strata Management Act 2013, ss. 7(2), 8(1), 15, 17, 19, 21(1)(b), (2), 22(2), 25(3), 59(1), 60(3)(b), First Schedule paras 4(3), 5(4), Second Schedule

Strata Management (Maintenance and Management) Regulations 2015, reg. 13

Strata Titles Act 1985, ss. 4, 36(a), (b), (c), 39(1), 45, 63, 66

For the appellant - Raymond Mah, Joy Appukuttan, John Chan, Esther Ong, Etrus Tan & Masha Sylverster; M/s Esther Ong, Tengku Saiful & Sree

For the respondent - HP Chuah & A Onn; M/s Onn & Partners

[Editor's note: For the High Court judgment, please see Muhamad Nazri Muhamad v. JMB Menara Rajawali & Anor [2018] 9 CLJ 547 (overruled).]

Reported by Najib Tamby

JUDGMENT

Vernon Ong Lam Kiat FCJ:

Introduction

[1] Can a Joint Management Body (JMB) impose different rates of maintenance charges for different types of parcels in a condominium development? That was the issue which presented itself at the High Court concerning the imposition of maintenance charges in a mixed condominium development comprising of residential, retail shop and car park parcels.

[2] In this case, there are no facts in issue to be determined. However, one question of law emerges clearly and it is this: Whether the Strata Management Act 2013 (SMA 2013) limits the power of the JMB to determine different rates of maintenance charges for different types of parcels?

The Salient Facts

[3] The mixed condominium development in question is known as Menara Rajawali. The plaintiff is the owner of a residential parcel. The JMB is the first defendant. The second defendant is the owner of all the car park parcels in Menara Rajawali.

[4] The dispute can be traced back to the first Annual General Meeting of the JMB on 25 June 2016 where it was unanimously resolved, *inter alia* that mandate be given to the Joint Management Committee (JMC) to fix the maintenance charges for:

(i) residential parcels and retail shop parcels at a rate not exceeding RM3.26 per share unit; and

(ii) car park parcels at a rate not exceeding RM1.68 per share unit. (JMB's resolution)

[5] Pursuant thereto, the JMC fixed the maintenance charges for:

(i) residential and retail shop parcels at a rate of RM2.80 per share unit; and

(ii) car park parcels at a rate of RM1.68 per share unit. (JMC's decision)

[6] On 26 January 2018, the plaintiff filed an action in the High Court seeking declarations that both the JMB's resolution and the JMC's decision are null and void *ab initio*. *The plaintiff contended inter alia, that the different rates of maintenance charges discriminated against retail shop and residential parcels*

and were unlawful in that it went beyond the JMB/JMC's legal power or authority. The High Court dismissed the plaintiff's action. This is the plaintiff's appeal. In this judgment, the parties shall be described as they were in the court below.

Findings Of The High Court

[7] The key findings of the learned judge are as follows:

(i) The words "share units" in the SMA 2013 is what would ordinarily be described as the 'multiplier' for purposes of determining the maintenance charge payable, whereas the rate payable as determined by the JMB via the JMC is the 'multiplicand'. The share unit or multiplier is fixed, whereas the multiplicand or rate can vary depending on what the JMB decides at the AGM;

(ii) The phrase "in proportion to the allocated share units" of each parcel (per s. 25(3)) or "in proportion to the allocated share units of their respective parcels" (per s. 21(2)) cannot be read or construed as fettering the ambit of the JMB's power (as approved by the AGM) to determine such rate of maintenance fee or sinking fund contribution as is deemed appropriate in the circumstances;

(iii) There is nothing in the SMA 2013 which prevents the JMB/JMC from fixing different rates of charges for different types or categories of parcels in the strata project, as long as this is approved by the AGM;

(iv) It is for the AGM comprising of the owners to decide whether the rate for maintenance charges for all types of parcels should be uniform or otherwise; and

(v) As the approval was given by a unanimous resolution at the 1st AGM, it was perfectly valid and legal for the JMB to fix differing rates of charges for the residential/retail parcels and car park parcels.

Submission Of Parties

[8] Five main points were canvassed by learned counsel for the plaintiff. The first is that the JMB's resolution and the JMC's decision are outside of their powers conferred by the SMA 2013, and therefore are *ultra vires* the SMA 2013, null and void *ab initio*. The words "in proportion" appearing in ss. 21 and 25 clearly require the JMB/JMC to determine and fix only one rate to be applied to all types of parcels (*Kee Keng Mow v. Setapak Garden Estate Ltd* [1975] 1 LNS 69; *Tan Eng Choon v. Tay Boon See* [1980] 1 LNS 74). The JMB being a creature of statute cannot do anything that is not permitted by the statute under which it is incorporated (*Malaysia Shipyard & Engineering Sdn Bhd v. Bank Kerjasama Rakyat (M) Bhd* [1985] 2 CLJ 427; [1985] CLJ (Rep) 206 (SC); (*Ekuiti Setegap Sdn Bhd v. Plaza 393 Management Corporation* [2019] 2 CLJ 592 (CA)).

[9] The second point is that the SMA 2013 only allows a Management Corporation (MC) to determine different rates of charges for different parcels. In contrast, s. 21 does not permit the JMB to determine different rates for different parcels. That power cannot be implied by the JMB in the absence of such express provision. A

[10] The third point relates to the legislative framework for the calculation of share units. The SMA 2013 provides weight differentiation, which acts as discounts, for the calculation of the share units of each parcel. Under the First Schedule, a car park (whole floor parcel) owner already enjoys a discounted weightage factor compared to a residential or retail parcel owner. As the rate per share unit for the respective parcels are different, the owners of residential, car park and retail parcels will be paying different maintenance charges which are not in proportion to the allocated share units. B C

[11] The fourth point is that the one rate requirement in the SMA 2013 is consistent with the provisions of the Housing Development (Control and Licensing) Regulations 1989 (HDR) which prescribes the maintenance charges which is calculated by dividing the total expenses with the total number of proposed share units assigned to all parcels. D

[12] The fifth point for the plaintiff is that no proper implication within the express words of ss. 21 and 25 and the First Schedule of the SMA 2013 can arise to introduce the JMB/JMC's discretion to determine different maintenance charges rates for different categories of parcels. In deciding that there is nothing in the SMA 2013 which prevents the JMB/JMC from fixing different rates of charges for different types of units so long as this is approved by the AGM, the learned judge erroneously filled in the purported gaps in the SMA 2013 and effectively exceeded the limit of his duty and power in interpreting the SMA in that manner (*Hari Bhadur Ghale v. PP* [2012] 7 CLJ 789; [2012] 6 MLJ 597 (FC); *Lai Yak Kee v. Pembinaan Alam Cemerlang Sdn Bhd* [2012] 1 LNS 1464 (FC); *Magor & St Mellons Rural District Council v. Newport Corporation* [1952] AC 189). E F

[13] The remaining subsidiary points taken by the plaintiff may be summarised as follows. One, the fact that the resolution was passed at the 1st AGM is immaterial as the JMB's resolution and the JMC's decision are still *ultra vires* the SMA and therefore null and void *ab initio* (*Ekuiti Setegap*, *supra*). Two, as a parcel owner's number of votes corresponds with the number of share units, the amount of maintenance charges to be paid should be in proportion to the number of share units allocated to a parcel owner. In this case, the owner of the car park possesses a substantially high number of share units (and voting power) but enjoy a significantly lower maintenance charges rate of RM1.68 per share unit. This is compared to owners of much smaller residential and retail parcels who have to pay a higher rate of RM2.80 per G H I

share unit. Three, permitting the JMB/JMC to determine different maintenance charges rates for different parcels is open to abuse. In this case, the JMB/JMC comprised of four committee members of which three are shareholder/directors of the second defendant, the car park owner. Conveniently, the JMC determined the maintenance charges rate for the car park parcels shall be significantly lower than the rate for residential and retail parcels. The final point was that the SMA 2013 requires the JMB to determine the specific and final maintenance charges rate for all parcels (s. 19 SMA 2013). The SMA 2013 does not confer any power on the JMB to fix a ceiling rate or to delegate the determination of the rates to the JMC (ss. 21 and 25 SMA 2013; reg. 13 and Form 5A of the Strata Management (Maintenance and Management) Regulations 2015; *Perbadanan Pengurusan Endah Parade v. Magnificient Diagraph Sdn Bhd* [2014] 5 CLJ 881).

[14] In his short reply, learned counsel for the first and second defendants argued that the rates of maintenance charges were determined in accordance with ss. 21 and 25 of the SMA 2013. There is nothing in the SMA 2013 to fetter the JMB's discretion to apply only one rate for all types of parcels. The plaintiff's argument which is premised on proportionality is without merit. The weightage factor is not the sole factor in determining the rate of maintenance charges. The JMC had, in fact, decided to retain and charge the full ceiling rate payable by the car park owner while charging below the ceiling rate payable by the residential and retail parcels. The learned judge was correct to hold that the car park facility is a service to the owners, and that the car park enjoys no maintenance services like security and cleaning.

Decision

[15] The main thrust of the plaintiff's argument is twofold. One, the second defendant is enjoying a double discount on his share of contribution of the maintenance charges. This argument is premised on the ground that the allocation of share units to every parcel owner has already taken into account the types of parcels, frequency of usage and general maintenance of the common property, whole floor parcel including or excluding area of vertical transportation core, and accessory parcels inside or outside building. Since the share value of the second defendant has already factored in the weightages, fixing a lower rate of maintenance charges for the car park units as opposed to a standard rate for all types of parcels would in effect be giving the second defendant a double discount. Two, the provisions of the SMA 2013 cannot be read as giving the JMB and the JMC the power to determine different rates of maintenance charges for different parcels.

First Point

[16] In this instance, the share units have already been allocated for all the parcels in Menara Rajawali. As the notion of 'share units' is significant in this appeal, we think it is necessary to have a proper appreciation of the concept of 'share unit' in the context of a strata development like Menara Rajawali.

What Are 'Share Units'?

[17] The notion of 'share units' is a feature peculiar to strata developments. It is based on the concept of a single, easily applied, method of determining each parcel owner's (i) voting rights, (ii) share in the common property, (iii) contribution to maintenance and administrative expenses, and (iv) proportional liability for the debts of the JMB or MC, as the case may be (ss. 36(a), (b), (c), 45, 63 and 66 of the Strata Titles Act 1985).

[18] The total number of share units allocated to a parcel is that parcel's share value. Each parcel owner shall have one vote on a show of hands at a general meeting of the JMB or MC. However, on a poll, each parcel owner shall have such number of votes as that corresponding with the number of share units (sub-s. 22(2); Second Schedule SMA 2013). In other words, parcel owners with higher share value will enjoy more voting power on a voting on a poll. On the flip side, the higher share value will also translate into a liability to pay higher aggregate maintenance charges and contributions to the sinking fund.

Meaning Of 'Share Units' Under The STA 1985 And SMA 2013

[19] The words 'share units' mean the share units determined for that parcel shown in the schedule of parcel owners: s. 4 of the STA 1985. Put simply, the share units of a parcel are the area of that parcel multiplied by the weightage factor for that type of parcel and the weightage factor for the entire floor parcel. If there is any accessory parcel, the area of the accessory parcel is multiplied by a weightage factor for that accessory parcel. If there is more than one accessory parcel, the formula for calculation shall be applicable to each accessory parcel and it shall then be added accordingly. Both the value of the parcel and accessory parcel are then added to determine the total share units for each parcel.

[20] Share units are calculated according to the formula under the First Schedule of the SMA 2013: sub-s. 8(1) SMA 2013. As will become clear, the calculation of allocated share units takes into account three weightage factors: WF1, WF2 and WF3. The formula for the computation of allocated share units is as follows:

Allocated share units of a parcel	=	(area of parcel x WF1 x WF2)	+	(area of accessory parcel x WF3)

[21] The allocated weightage factors are based on different sets of criteria. In the case of the weightage factor WF1, Table 1 makes three main differentiations: (i) the different types of parcels; (ii) between parcels with or without air-conditioning to the common areas or corridors, lobbies and foyers; and (iii) between parcels having benefit or no benefit of common lift/escalator facility. The following examples are illustrative of the general scheme of the First Schedule:

(a) The weightage factor of an apartment with air-conditioning to common areas of corridors, lobbies and foyers having benefit of common lift/escalator facility is 1.30; whereas the weightage factor for a similar apartment having no benefit of common lift/escalator facility drops to 1.15.

(b) An apartment without air-conditioning having benefit of common lift/escalator facility is accorded a factor of 1.00; whereas the weightage factor for a similar apartment having no benefit of common lift/escalator facility is only 0.85.

(c) A car park (whole floor area) with air-conditioning to common areas of corridors, lobbies and foyers having benefit of common lift/escalator facility is 0.85; whereas the weightage factor for a similar car park having no benefit of common lift/escalator facility drops to 0.75.

(d) A car park (whole floor area) without air-conditioning having benefit of common lift/escalator facility is accorded a factor of 0.75; whereas the weightage factor for a similar car park having no benefit of common lift/escalator facility is only 0.65.

[22] Weightage factor WF2 includes a whole floor or a block of contiguous whole floors of car parks in a complex. Table 2 provides a weightage factor of 0.85 for a car park (whole floor area) excluding area of vertical transportation (lifts/escalators) as compared to 0.80 for a car park including area of vertical transportation. Weightage factor WF3 allocates a factor of 0.25 for outside building and 0.5 for within building.

[23] The allocation of weightage factors for whole floor parcel (WF2) and accessory parcel (WF3) in particular, is premised on equitable considerations. This is reflected in sub-para. 4(3) of the First Schedule in relation to WF2 which states that "**In order to be equitable to other parcels** which form the majority and comprise only net lettable areas, a whole floor must be adjusted to its equivalent net lettable area by taking into account its large circulation area or vertical transportation core in the whole floor parcel." And in relation to WF3, sub-para. 5(4) of the First Schedule states that "**In order to be equitable** before incorporating into the allocated share units of a parcel, the area of an accessory parcel must be adjusted to reflect that it is non-habitable and generally of lower construction cost." (emphasis added)

[24] Accordingly, the criteria in determining the allotment of share units is based on weight differentiation for share units as illustrated by the three weightage factors WF1, WF2 and WF3. In addition to the above, ss. 21 and 25 of the SMA 2013 requires the JMB to determine the maintenance charges "in proportion to the allocated share units of each parcel." The word 'proportion' is defined as 'to adjust in proper proportion to something else as to size, quantity, number etc.; to make proportionate' (*Oxford English Dictionary*, vol. VIII). The words 'in proportion' was explained in *Tan Eng Choon v. Tay Boon See* [1980] 1 LNS 74; [1980] 2 MLJ 290, 2910 as "A thing is said to be in proportion to another when there is a comparative relationship or ratio between the two. The relationship is such that any increase or decrease in one will involve a relative adjustment of the other so as to maintain the existing harmony between them."

[25] In light of the fact that three weightage factors have been applied in the calculation of share units for car park parcels and which calculation is premised on equitable considerations, it would appear that the JMB is only empowered to fix one rate which is applicable to all types of parcels. If that course is adopted, then the owners of different type of parcels will be paying maintenance charges in proportion to the allocated share units of their respective parcels because the rate per share unit is the same. We are therefore inclined to agree with the plaintiff's argument that since the car park unit (whole floor parcel) is already enjoying a 40% discount by way of the calculation of its share units pursuant to the WF formula in the First Schedule, it will enjoy a further 42% discount given the lower rate of maintenance charges for the car park units. This additional discount would, in our view, run counter to the legislative framework which is intended to avoid inequitable, unfair and discriminatory practice in determining maintenance and maintenance charges rate. Therefore, the imposition of two different rates of maintenance charges for different types of parcels is incompatible with the meaning of "in proportion" in ss. 21 and 25 of the SMA 2013 since there is no comparative relation, ratio or harmony between the two different rates and the different allocated share units of each parcel. In describing the share unit as the 'multiplier' and the rate as the 'multiplicand', the learned judge did not appear to have given proper effect to the phrase "in proportion to the allocated share units" of sub-s. 21(2) and sub-s. 25(3) of the SMA 2013. Accordingly, we do not think that the description of the share unit as the 'multiplier' and the rate as the 'multiplicand' is apposite.

[26] It is also important to apprehend the general legislative scheme of the SMA 2013 and the STA 1985 which governs all strata development projects. Both statutes set out a comprehensive, transparent, equitable and uniform regime to allocate and calculate the share units of each parcel; which must

be filed with the Commissioner of Buildings and approved by the Director of Lands and Mines. It appears that the learned judge did not appreciate that different weightage factors between the types of parcels have been taken into account in the First Schedule of the SMA 2013.

[27] We therefore take the view that on a proper construction of the said sections, the JMB is required to determine and fix only a single rate of maintenance charges to be applied to all types of parcels in proportion to the allocated share units. Accordingly, we do not think that the JMB's resolution in fixing different rates for different types of parcels is in conformity with ss. 21 and 25 of the SMA 2013.

Second Point

[28] We will now consider the question of whether the JMB's resolution and the JMC's decision is *ultra vires* the SMA 2013 and the STA 1985. This is a question of law which turns on the proper construction of ss. 21 and 25 of the SMA 2013. In this case, the JMC's decision was made pursuant to the JMB's resolution; which resolution, it will be recalled, gave a mandate to the JMC to fix the maintenance charges for different types of parcels subject to certain ceiling rates. The underlying reason for the learned judge's decision is premised on (i) there was nothing in the SMA 2013 limiting the power of the JMB or JMC from fixing different rates of maintenance charges, (ii) it was a matter for the owners to decide at the AGM of the JMB, and (iii) the SMA 2013 did not proscribe any differentiation of the maintenance charges.

[29] It is important to comprehend the statutory role of the JMB against the backdrop of three stages of management in a strata development project. The initial period of management after the completion of a strata development is undertaken by the developer, followed by the JMB and the management is ultimately taken over by the MC. As such, the JMB plays a transitional role in the management of the building and common property in a strata development.

Developer's Management Period

[30] Immediately after the delivery of vacant possession of a parcel to a purchaser in a strata development project, the developer is required to maintain and manage the parcels and common property; this is known as the developer's management period: sub-s. 7(2) SMA 2013.

Joint Management Body

[31] A JMB is established at the first AGM of the JMB which must be convened within 12 months from the date of delivery of vacant possession of a parcel to a purchaser: s. 17 SMA 2013. Once a JMB is established, the developer is required to hand over to the JMB the monies remaining in the maintenance account and the sinking fund account and various other matters

pursuant to s. 15 of the SMA 2013. A JMB is a body corporate and it is comprised of the developer and the purchasers. A JMB is under a duty to, *inter alia* (i) maintain and manage the building or land intended for subdivision and the common property, and (ii) determine and impose the maintenance charges and the contribution to the sinking fund: sub-s. 21(1) SMA 2013. In this connection, a JMB is empowered to, *inter alia* (i) collect the maintenance charges and contribution to the sinking fund, (ii) to do all things reasonably necessary for the performance of its duties.

[32] A JMC is the executive arm of the JMB and it is elected by the JMB at a general meeting. The JMC carries out and conducts the JMB's duties and business subject to any restriction imposed or direction given by the JMB: s. 22 SMA 2013. A JMC is also a creature of statute and as such, its powers are (i) those expressly provided under the SMA 2013, and more particularly, (ii) those which may reasonably be implied as necessary and proper for the purpose of carrying out its duties, and the limit of its implied power is the object of its formation.

Management Corporation

[33] An MC is established after the opening of a book of the strata register; ie, to say, after the documents of strata titles have been issued and a register of strata titles have been prepared by the Registrar of Titles: sub-s. 39(1) of the STA 1985. The MC is required to *inter alia*, maintain and manage the subdivided building and common property, determine, impose and collect the maintenance charges and the contribution to the sinking fund, prepare and maintain a strata roll for the subdivided buildings: s. 59(1) of the SMA 2013. The JMB is dissolved within three months from the date of the MC's 1st AGM; the JMB is also required to conduct a handing over to the MC within a period of one month.

Statutory Interpretation

[34] The question of whether the SMA 2013 limits the JMB's power to fix different rates is ultimately a matter of statutory interpretation. The rules governing statutory interpretation are quite settled. In construing a statute, effect must be given to the object and intent of the Legislature in enacting the statute. Accordingly, the duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it. The court will not read words into a statute unless clear reason for it is to be found in the statute itself (*Sri Bangunan Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Anor* [2007] 5 CLJ 673; [2007] 6 MLJ 581 (FC)). Therefore, in construing any statute, the court will firstly, look at the words in the legislation and apply the plain and ordinary meaning of the words in the statute. If there is any ambiguity to the words used, the court is duly bound to accept it even if it may lead to mischief. Where the language used is clear and

unambiguous, it is not the function of the court to re-write the statute in a way which it considers reasonable. But if the words employed are not clear, then the court may adopt the purposive approach in construing the meaning of the words used (see *PP v. Tan Tatt Eek & Other Appeals* [2005] 1 CLJ 713). In *Andrew Lee Siew Ling v. United Overseas Bank (Malaysia) Bhd* [2013] 1 CLJ 24; [2013] 1 MLJ 449 FC, the Federal Court enunciated on the application of s. 17A of the Interpretation Acts 1948 and 1967 which provides for a purposive approach in the interpretation of statutes.

[35] Therefore, where the words of a statute are unambiguous, plain and clear, they must be given their natural and ordinary meaning. The statute should be construed as a whole and the words used in a section must be given their plain grammatical meaning (*Hari Bhadur Ghale v. PP* (*supra*). It is not the province of the court to add or subtract any word; the duty of the court is limited to interpreting the words used by the Legislature and it has no power to fill in the gaps disclosed (*Lai Yak Kee v. Pembinaan Alam Cemerlang Sdn Bhd* (*supra*)). Even if the words in a statute may be ambiguous, the power and duty of the court "to travel outside them on a voyage of discovery are strictly limited." (*Magor & St Mellons Rural District Council & Newport Corporation* (*supra*)).

[36] As a creature of statute, the powers of the JMB are limited and circumscribed by the SMA 2013 which regulates it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its establishment, or may be fairly regarded as incidental to, or consequential upon, those things which the Legislature has authorised. What the SMA 2013 does not expressly or impliedly authorise is to be taken to be prohibited.

[37] Under the clear statutory provisions, the JMB is the decision-making body, whereas the JMC is the executive arm responsible for the implementation of the JMB's decisions and performance of the JMB's duties. There is no provision in either the SMA 2013 or the STA 1985 which confers the JMC with power to decide on the rates; or for that matter, which permits the JMB to delegate its decision-making duty under sub-s. 21(1)(b) of the SMA 2013 to the JMC. We do not think that in this case, such powers can be implied. In our view, the duty to make the decision is a duty imposed on the JMB and that duty is non-delegable. We say this because the decision to determine the maintenance charges is made by the JMB at a general meeting attended by the developer and purchasers; it is a collective decision. In short, the decision to fix the maintenance charges must be made by the JMB. It therefore follows that the JMB's resolution to delegate its duty to the JMC is in excess of the JMB's powers under statute. As such, the mandate given to the JMC is invalid, null and void.

[38] There is also no provision under the SMA 2013 and the STA 1985 which empowers the JMB to fix different rates for different types of parcels. In contrast, such a power is expressly conferred on an MC in respect of two specific situations, (i) parcels which are used for significantly different purposes, and (ii) provisional blocks; sub-s. 60(3)(b) of the SMA 2013. Therefore, if Parliament had intended for the JMB to have the power to fix different rates of maintenance charges, that intention would have been clearly reflected in the provisions of the SMA 2013; and because there is no such provision, it must have been Parliament's presumed intention and wisdom not to confer such power on the JMB.

[39] In this connection, we think that an analogy can be drawn between the provisions in the SMA 2013 and the provisions of the HDR. Pursuant to cl. 19(3) of the prescribed Sale and Purchase Agreement for strata development (Schedule H), the maintenance charges is based on the "Amount per proposed share unit"; and the charges are calculated by dividing the total expenses with the total number of proposed share units allocated to all parcels (see note (iii) of Fifth Schedule in Schedule H). Under the HDR, parcel owners will in fact be paying maintenance charges "in proportion to the allocated share units" of their respective parcels because the rate per share unit is the same.

[40] Be that as it may, does the fact that the JMB's resolution was carried by a unanimous vote makes it perfectly legal and valid for the JMB and JMC to fix and collect the different rates of the maintenance charges. The learned judge took the view that it would. However, we take a different view. The JMB as a body corporate under statute can only determine charges which are mandated under the SMA 2013. It will be *ultra vires* the SMA 2013 for the JMB and the JMC to fix and impose the different rates which are not sanctioned by statute. Further, the JMB does not have the inherent power nor can it arrogate to itself such power, even if the approval was obtained in a unanimous resolution at the AGM (*Malaysia Shipyard & Engineering Sdn Bhd v. Bank Kerjasama Rakyat (M) Bhd, (supra)*).

[41] For the foregoing reasons, the JMB's resolution and the JMC's decision are hereby set aside for being invalid, null and void. The order of the High Court is set aside. We therefore allow prayers 1, 2, 3 and 4 of the originating summons. The appeal is allowed with costs.